



**TOWN OF WESTFORD
PLANNING DEPARTMENT**

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Planning Board Meeting Minutes

January 21, 2015

Approved May 18, 2015

Place: Blanchard Middle School Auditorium, 14 West Street, Westford, MA

Present: Michael Green, Dennis Galvin, Kate Hollister, Matthew Lewin, Darrin Wizst

Staff Present: Chris Kluchman, AICP; Jonathan Silverstein, Town Counsel, Jeffrey Morrisette, Town Planner (joined at approximately 8:20 p.m.)

Green opened the public meeting after adjourning executive session.

Open Forum: 7:30 p.m.

Green explained the logistics of the meeting for the public.

Public Hearing:

**7:35 P.M. PB 1504 SPR/MCP/SP WRPOD/SP Under 9.3/SWM
20 Commerce Way (Also Known as 540 Groton Road)
Newport Materials LLC and 540 Groton Road LLC**

7:32 p.m.

Public hearing for a Site Plan Review (Section 9.4 of the Zoning Bylaw), a Special Permit for a Major Commercial Project (Table of Principal Use Regulations and Section 9.3A), a Special Permit for storage of hazardous materials within the Water Resources Protection Overlay District, Section 8.1) a Special Permit (Section 9.3), and a Stormwater Management Permit (under Chapter 147 of the Town of Westford General Bylaws) in order to construct an asphalt manufacturing facility and associated materials stockpile yard with a 10,000 gallon tank for storage of #2 fuel oil. The applicant seeks the above permits and any other permit or relief as may be required under the Town of Westford Zoning Bylaw and as may be required by the Decision issued by Land Court 10 MISC 429867. The subject property is identified as Assessor's Map 048 Parcel 0011 Lot 0234 and is within the Industrial A Zoning District.

Motion made by Galvin to waive the reading of the public hearing notice. Motion seconded by Lewin. The motion passed by a 5-0-0 vote.

Motion made by Galvin to open the public hearing. Motion seconded by Lewin. The motion passed by a 5-0-0 vote.

Green stated the Board's goal for this meeting is to talk about the process, history and background, and the plan before the Board going forward. He stated there will be subsequent hearings which

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will allow the Board to examine the proposed plans in greater detail. Kluchman provided background information on the project. She stated approximately five years ago the Board was in hearings on the application for asphalt manufacturing at 20 Commerce Way, or 540 Groton Road. The Board denied those applications because the Board found that asphalt manufacturing did not meet the definition of light manufacturing. The denial was appealed by the applicants and after several years of litigation and a trial the judge issued a decision in December 2014.

The Board is hearing the applications on remand from Land Court. The judge determined if the applicant submitted four criteria it would qualify as light manufacturing. The applicant received a clean air permit from the Department of Environmental Protection (DEP) which was appealed, modified, and reissued in April 2011 which sets forth restrictions on the project.

Jonathan Silverstein, Town Counsel, provided an overview of the court's decision which essentially upheld the Planning Board's decision that the proposal as presented originally did not constitute light manufacturing, rejected the applicant's argument that the asphalt plant use would also be allowed as a quarrying or mining use, and also rejected the applicant's claim that no major commercial project special permit was required. The court went further and informed the applicant what it could do to bring this use within the definition of light manufacturing and eligible for consideration of a special permit, as follows: installation of noise attenuation barriers; employing at least five employees at the project site; show how the substantially noiseless requirement, which only applies to the power source of the project, will be accomplished; and seek a variance from the Zoning Board of Appeals to authorize multiple uses on the site.

Silverstein indicated the court's decision is not currently appealable, but may be at some point after the Board goes through the remand process. By holding this hearing the Town and the Planning Board are not waiving any rights they might have going forward to contest findings in the court's decision. The variance application and special permit applications submitted to the Zoning Board of Appeals are not something the Planning Board will deal with.

Kluchman indicated all the material discussed is available on the town's website. She provided a brief overview of the site map, and encouraged residents to read the available materials online and submit comments and questions via email. Green emphasized the importance of using official town staff email addresses rather than sending emails to individual Board members, as the information may or may not be part of the public record.

Tom Reilly, litigation counsel for Newport Materials, addressed the Board. He referenced footnote 45 in the judge's decision, indicating it goes to the heart of what is being discussed. The judge wrote "in sum, this dispute should have been resolved long before it came before this court, that the parties inability or unwillingness to resolve their disputes has resulted in over four years of costly litigation, including two summary judgement motions, numerous other procedural motions, and a three day trial, all of which might have been avoided." Green noted that disputes involve two parties. Reilly stated the judge has given Newport and the town an opportunity to get this right and he urged the Board to tour the site.

Douglas Deschenes, representing the applicant, addressed the Board. Present with him was Rick DeFelice, the Manager of Newport LLC and 540 Groton Road LLC, and Matt Waterman of LandTech Consultants. He stated the first requirement of the remand was that the plaintiff should

submit a modified site plan review application, which has been done. He provided a PowerPoint presentation and overview of the site and the proposed operation. The site is located in the Industrial A zone and is surrounded by industrial uses. They will be employing best available control technologies and this will be a state of the art rotary drum mix facility, with a low emission burner. The main source of fuel is natural gas which will be piped to the site, with No. 2 fuel oil as a backup source. All of the processors will be run by electric motors.

Deschenes stated the second requirement of the decision was they had to incorporate sound attenuation barriers. This will allow the project to meet sound standards under the MCP permit, and will also establish that the process is quiet, pursuant to the definition of light manufacturing. The west boundary of the site exceeds the allowable level and necessitates a sound barrier. He stated the Planning Board may in the course of granting a special permit for a project waive any performance standard, so they are requesting a waiver from the Board on the sound standards at the western boundary line.

Deschenes stated the third requirement is that the project employ five or more employees, and they are committed to employing at least five employees at all times the plant is in operation. The fourth requirement is that the applicant request a variance to operate more than one principal use on the Groton Road parcel. They have filed with the Zoning Board of Appeals for relief in accordance with the court decision to allow this facility as the additional principal use on the site. They have also applied for a variance from the light manufacturing sound requirements.

Deschenes stated the fifth remand requirement is the issue of the project's power source. Electric power will be the sole source of power for this facility. The sixth requirement that the application should be accompanied by revised permits, applications for the MCP, WRPOD, and stormwater management permit under the local bylaw. He stated they are conducting an updated traffic report which will be available to the Board next week. Vehicle traffic from the facility will be limited to less than 250 trips per day using public roadways. The WRPOD special permit is needed because they are proposing three storage tanks, one 10,000 gallon tank to hold No. 2 fuel oil, and two 30,000 gallon tanks which will hold liquid asphalt.

Hollister noted she did not have access to the staff report until today so has not had an opportunity to review it in detail. She asked for clarification on whether the Board still has to make determinations based on all materials submitted when reviewing this application. Silverstein confirmed that this is correct, that a special permit is a discretionary permit and the Board has discretion to allow the use and grant the special permit or not allow use and deny the special permit based on criteria set forth in the bylaw. The Board does not have the discretion to grant a special permit if the underlying use is prohibited in the bylaw. He stated the Board determined in 2010 that the use being proposed was more akin to heavy manufacturing than to light manufacturing, so it did not get to the question whether it is an allowed use and do we want to grant a special permit. The court has said if the applicant can satisfy the Board of the issues outlined tonight then they should consider this to be light manufacturing use eligible for consideration for a special permit and should then address the question if they want to grant the special permit in accordance with the terms of the bylaw.

Hollister asked about the DEP decision, as it came two years after the Board made its decision and there may be changes since the original application was in 2009. Kluchman stated the DEP

approval was in 2011 and the application in front of the Board does not vary from the plans that were submitted to DEP. The DEP permit of 2011 was not available to the Board in 2010 because it was subject to appeal at the time the Board made its decision, but is applicable to what is in front of the Board at this time.

Galvin confirmed the role of the Planning Board in this situation is two-fold, the first having to do with the determination of light manufacturing, and the second is under what conditions can the applicant construct the plant. He noted that the light manufacturing section has been restricted to a narrow margin but it is still in the Board's discretion to determine whether or not it fits the definition. The special permit allows full discretion to the Board to make a determination under what conditions the project can be built. He stated he would like to have an independent review of the power source presented to the Board to determine whether or not the power source fits the definition.

Motion made by Galvin that the Board include the question of the power source in peer review and it be reviewed by the independent peer reviewer. Motion seconded by Lewin. After discussion the motion and second were withdrawn.

Motion made by Galvin that the Planning Board direct town staff to prepare a scope of work for a peer reviewer to be able to assist the Board in examining and evaluating the source of power for this application. Motion seconded by Lewin. The motion passed by a 4-1-0 vote (Green opposed).

Kluchman clarified the timeline for this process. She stated the original decision from the judge gave the Board four weeks from the date of the receipt of the application to issue a decision. The Board requested an extension of time and the decision now must be made by March 26, 80 days from the date the Board received the application. This is a shorter timeframe than the Board usually has for special permit applications.

Green asked about the location of the storage tanks. Deschenes indicated their plan reflects two silos on either side. Green stated there have been operational changes through this process which are noted in the application and he asked for reference to this on the plans.

Green opened up meeting to questions from the audience.

Mike Jerzylo – He expressed concern with 250 trips per day x 6 days, which is 1,500 more trips on the road and how the intersection is going to handle this. He asked if the town's sound engineer looked at the frequency of what the sound is going to be. He stated he lives 2.5 miles from where the railroad tracks cross to go under the high school and when the trains idle there it is 40-45 db, but he can feel the low frequency hum. He stated when they spin the drums they will not be spinning at 20,000 rpm, they are slow and churning, which is a low frequency hum.

Larry Sweeney, Chelmsford – He stated this is an issue of whether or not the Board interprets its own bylaw consistently with what the judge did. He asked if they are going to be considering whether they agree with the judge's interpretation that the word substantially noiseless refers only to the power source and not to other sources.

Silverstein responded that they argued the judge's interpretation before the court and the court made its determination. He stated the time in which the town will have the opportunity to appeal that determination, if it chooses to do so, has not come. He stated for purposes of this remand hearing the Board has an order from the judge and is constrained to listening to what the court determined.

Mr. Sweeney stated the DEP permit excluded any consideration of the truck traffic and the truck noise. He referenced Attorney Reilly's comments and stated the judge's desire to clear his docket has no bearing on this decision.

Vladimir Gilman, Marieann Drive – He expressed concern with the number of trucks leaving the site and air contamination and odor from those trucks.

Eric Leafquist, Crown Road – He stated it would be possible to power the entire facility with electrical motors yet have a very large generator there as a backup tool. He encouraged town staff to look at the whole process, not just the actual powering of the conveyor systems. He asked about plans to contain cleaning solvents used to clean drums and trucks.

Kluchman responded the town has adopted a Hazardous Materials bylaw and she anticipates those chemicals will fall under the purview of the Board of Health.

David Hudson, Myrtle Avenue – He asked what has changed in the last four to five years that would make it possible for this town to stipulate, without perjuring itself, that this plant would not emit foul odors, given that Town Counsel would have been present at a previous hearing when he stated that outside the daycare center, three-quarters of a mile downwind of the plant in Portsmouth, the stench was obvious to those visiting, but the people in the area had already become habituated to it. He also asked if the Board is constrained by that stipulation.

Silverstein clarified that this case is still in litigation and he cannot comment on any litigation strategy decisions made by the Board in executive session in the course of litigation. He stated the Board hired expert witnesses and made strategy decisions based upon the expected testimony and reports provided by expert witnesses. The constraints of the Board are based upon the court's decision and in determining whether or not this is light manufacturing for the purposes of this remand hearing the board is restrained by the criteria that the court has established for making that determination.

Martin Corbett, Danley Drive – He asked if the 250 trucks is an average per day, including the time the plant is not operational, or is the number only during the time the plant is operational. He also asked if the engines in the trucks can be added to the engines in the power plant, since all engines add to the environment. He asked why rock crushing is permitted when it was his understanding that rock crushing was not allowed at the quarry due to the release of particulates.

Kluchman responded they will not be able to answer this question until the traffic study is completed. She stated there are many criteria the Board will have to consider and one does deal with noise. She indicated the DEP permit specifically permits rock crushing operations at this site. Deschenes stated the 250 trucks per day is for each day of operation. He stated rock crushing is part of the DEP permit and is a historic use that has been occurring on the site for many years. Green stated they will have to look into whether rock crushing was prohibited at the quarry.

Corbett asked if all the material being used to produce the asphalt will be generated from this site, or brought in from the outside on rail or trucks. Deschenes stated the number of trucks includes deliveries and they are not proposing any deliveries via train.

Joe Spadano, Old Lowell Road – He asked if the traffic study will take into account the effects of pollution and noise that currently exist with the Chelmsford asphalt plant and the eight miles of roadway in Westford that it presently uses.

Kluchman responded that the current permit that allows the material processing that currently exists does have a prohibition for right turns out of the driveway when trucks leave the site, so all current truck traffic should be turning left. However, trucks can arrive from Groton heading toward Route 3. She stated this Board could consider this type of condition. Green stated the Chelmsford plant operation is not part of this traffic study, unless its operation is related to this operation. Deschenes stated the Chelmsford plant operation is not related to this operation.

Doug Meinkempf, Chelmsford – He stated the major power is not electricity but whatever is going to be used for heating and making asphalt. He asked if the asphalt recycling is part of this operation, and if so, are the trucks for that operation considered in addition to this operation. He stated these trucks should be considered in this operation. He also asked what the applicant did to reduce the number of truck trips to 250.

Deschenes stated the existing recycling facility is not part of this operation as it is a separate operation; however, materials from that processing operation are intended to be a source for this facility. He stated the trucks associated with the processing facility are not part and parcel of this facility. As part of the appeal there was a significant amount of discussion on the number of trucks and whether the number would trip the need for a major commercial project. The court determined the facility could generate in excess of 250 trucks a day and application of the major commercial project was valid, however, his client is committing to limit the truck traffic generated from this facility to public roads to 250 vehicle trips per day.

Meinkempf asked if the current crushing operation has a December 15-March 15 quiet period as well. Kluchman responded this operation does not have that restriction, but there is a very low number of trucks in and out of the facility during that time.

Jeyaprakash Chittu, Morrison Lane - He asked what the sound level is at the residential neighborhood within 1400 feet of this property. He asked what the target parts per million are that will be emanating from this facility. He pointed out that within one-quarter mile there is a daycare facility.

Green stated sound levels will be part of the sound study, and the DEP study references the emissions.

Alisa Nakashian Holzberg, 6 Betty Lane – She asked if the Board is allowed to refuse granting any of these permits, or are they only allowed to place conditions on them.

Silverstein responded that Deschenes referenced the court decision and suggested that this would be a use allowed by right subject only to whatever conditions the Board might want to include in

granting a special permit. He sought clarification from the court, and from the bench the court indicated that they are absolutely not intending in its decision to direct issuance of the special permit or to limit the discretion the Board would normally have in determining whether to grant such a special permit. He stated whatever decision the Board makes could be subject to further appeal, however, they are not being ordered to order the special permit.

Holzberg asked if the Board is granting the major commercial permit as a result of these hearings is there then recourse to appeal the judge's decision. She stated her concern is that this decision jeopardizes other properties in town if this type of operation being considered light manufacturing, which she feels the judge got wrong. She stated she thinks it is preposterous that this type of operation would be considered light manufacturing. She asked if this permit is granted and the light manufacturing decision is overturned, would this permit vanish.

Silverstein stated there would be ways for such an appeal. Abutters who requested from the court, and were denied the opportunity to participate in the trial, would have their statutory rights to appeal issuance of a special permit. If the town chose to do so there would be procedural ways to appeal the determination.

Holzberg stated that during the original hearings the applicant touted the fact that the daycare facility near the operation in Portsmouth had no problem with the plant. She contacted the daycare center herself and they told her they never officially said they were not bothered by that plant.

Lewin requested that an executive summary of the information from the previous hearing be created. Kluchman stated she will bring information from the previous hearing forward for the Board to review and will post it on the Board's website by topic. Silverstein stated the original public hearing process comprised approximately 6,000 pages of material.

William Xu, Caldwell Drive – He asked if the trucks going into the road will make a lot of noise. He also expressed concern that the truck traffic will create emissions. Green responded this is a public roadway and the vehicles will create noise. He stated the Board will be reviewing steps that will be taken to cover the beds of trucks and wash the trucks.

Caldwell Drive resident asked what the plan is in the case of explosion or fire, as this is close to a residential area and school. Deschenes responded there was an extensive safety analysis done for the facility which was peer reviewed by an independent fire safety expert, as well as the Westford Fire and Police Departments, and they have a complete fire protection plan in place.

Carl Marty, 7 Danley Drive – He asked if the number of trucks per day could be broken down per hour, how many trucks per hour are likely to go through the site.

Dinesh Hegde, Chelmsford – He expressed concern with air quality and having time to do appropriate studies despite the 80 day timeframe the judge allowed. Galvin stated he was present at the final court appearance and it is important to note that the judge did impose a tentative deadline, but he also made it clear that if there was a good faith situation involving an extension he would not cut that off.

Green stated before the Board are two scopes of work for traffic and noise peer review.

Motion made by Galvin to accept the statement of work related to peer review for traffic from MDM received January 16, 2015. Motion seconded by Lewin. The motion passed by a 4-0-1 vote (Hollister abstained).

Motion made by Galvin to accept the scope of work related to noise from Acentech per statement dated January 5, 2015. Motion seconded by Lewin. The motion passed by a 4-0-1 vote (Hollister abstained).

Green asked the applicant to provide dates for the Board to conduct a site visit. Deschenes indicated that a Saturday morning would be the best time. Green indicated he would like this to be a Board only site visit, not to include the public. It was decided to discuss this at the next meeting.

Motion made by Galvin to continue the public hearing until Monday, January 26, 2015 at 7:30 p.m. at the Blanchard Middle School. Motion seconded by Lewin. The motion passed by a 5-0-0 vote.

Motion made by Galvin to adjourn. All in favor.

List of Documents and Other Items Used at the Meeting

1. Planning Board Agenda Wednesday, January 21, 2015
2. January 21, 2015 Planning Board Packet materials
3. Public Hearing Notice & Posting PB1504 SPR/SP/SWM 20 Commerce Way – Asphalt Plant
4. Preliminary Staff Notes to Planning Board from Chris Kluchman dated 1-17-2015 re: Planning Board Hearing #1
5. Copy of Commonwealth of Massachusetts Land Court Findings
6. Letter from Deschenes & Farrell to Planning Board dated January 5, 2015 re: Application pursuant to remand decision of the Land Court Dated December 8, 2014 10 Misc. 529867 (AHS) Newport Materials, et al v. Planning Board of Westford, et al. (the “Decision”)
7. Planning Application Package 540 Groton Road Stamped January 5, 2015
8. Letter from Cavanaugh Tocci Associates to Planning Board dated January 2, 2015 re: Acoustical Evaluation and Recommendations for Sound Barrier Wall Alternatives to Comply with Land Court Decision Acoustical Requirements Department of the Trial Court 10 Misc 429867 (AHS)
9. Letter from Deschenes & Farrell to Planning Board dated January 16, 2015 re: Application pursuant to Remand Decision of the land Court Dated December 8 2014 10 Misc. 529867 (AHS) Newport materials, et al v. Planning Board of Westford, et al (The Decision)
10. Power Point Presentation to Newport materials LLC and 540 Groton Road, LLC
11. Letter from Acentech to Town of Westford attention Chris Kluchman dated January 5, 2015 re: Proposal for Acoustical Consulting Services Newport Materials – Updated Application for Asphalt Plant Acentech Proposal No. P625706
12. Email from Chris Kluchman to Melissa Robbins dated Tuesday January 13, 2015 re: Fwd: RFI – Westford – Newport Materials acoustical peer review
13. Letter from Department of Environmental Protection to Mr. Richard DeFelice stamped April 7, 2011 re: Westford Metropolitan Boston/Northeast Region 310 CMR 7.02 – Air Quality Non-Major Comprehensive Plan Application Transmittal No. X227251 Application No. MBR – 09- IND-005 Modified Conditional Approval
14. Email from Chris Kluchman to Technical Review Group dated Friday January 9, 2015 re: Asphalt Plant Application materials